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In The

Supreme Court of the United States

October Term, 1965

No. 416

RENEE PATRICE GILLIAM, ET AL.,
Petitioners,

v.

SCHOOL BOARD OF THE CITY OF HOPEWELL, VIRGINIA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PRELIMINARY STATEMENT

This brief is filed on behalf of the respondents School Board of the City of Hopewell, Virginia, and Charles W. Smith, Division Superintendent of Schools, in opposition to the granting of the Writ of Certiorari prayed for in the petition for the reason that the courts below have properly applied the rule of *Bell* v. *School City of Gary, Indiana,* 7 Cir. 324 F. 2d 209, cert. den. 377 U.S. 924 to the effect that *de facto* segregation resulting from school zones which are not gerrymandered does not violate the Constitution and for the reason that the practices of respondents with

respect to the faculties in its school has not been properly raised or heard in the District Court and the petitioners have a speedy and adequate forum in that Court in which to raise and be heard on the issue which they seek to litigate at the appellate level.

THE STATEMENT OF THE CASE

It would be difficult to improve on the clear and concise statement made by Judge Haynesworth speaking for the Court of Appeals. For this Court's convenience we quote here the more pertinent portions of his statement of the facts:

> "Hopewell, Virginia, is an industrial city located at the confluence of the James and Appomattox Rivers. It is roughly bisected by the Norfolk and Western Railroad, which runs from Hopewell's southwestern border roughly northeasterly to the James River, while the Seaboard Airline Railroad divides the city in an approximately east-west direction. Except in the southwestern portion of the city, the Norfolk and Western Railroad is bounded on its southeastern side by many factories, and there are long reaches of that railroad which are uncrossed by streets. These railroads, and the industrial sections which bound them, constitute obvious and natural geographic boundaries between residential areas, some of which are made remote from each other by the intervening industrial, nonresidential sections which abut the railroads.
>
> "The School Board adopted a geographic zoning plan. The zone boundaries were drawn along natural geographic boundaries, particularly the railroads. The schools are centrally located in each zone, except for two zones in areas annexed to the City of Hopewell after those two schools had been constructed.
>
> "Some Negroes live on the northwestern side of the Norfolk and Western railroad. They are in an elemen-

tary school zone in which the majority of the residents are white. Pupils from the elementary school in that zone are fed automatically to a high school in which the majority of the pupils are white.

"The great majority of the Negro residents of Hopewell live on the southeastern side of the Norfolk and Western Railroad. With an exception to be mentioned presently, the residential areas in which they live are separated from residential areas inhabited principally by white people by the railroad and by industrialized, nonresidential sections. One elementary school is located centrally in the area it serves, as is another combined elementary and high school attended entirely by Negroes. A third elementary school attended solely by Negroes is located at the extended city limits, this being one of the schools which came into the Hopewell City School System by annexation after it had been constructed.

"When this action was first commenced and before the court approved Hopewell's geographic zoning plan, it ordered the admission of the then infant plaintiffs into the schools of their choice. They were admitted, after which the School Board took an appeal to this Court. We held that the question was moot, since the order required their admission only for the current year and the School Board had fully complied with the order.[1]

"Thereafter, after some modification of the plan, principally the addition of a provision giving any child who lived nearer to a school outside of the zone in which its residence was located a right to attend that school, the District Court approved the plan. It refused, however, to require, or permit, the involuntary re-transfer of the original plaintiffs transferred pursuant to the earlier order of the Court.

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[1] Gilliam v. School Board of City of Hopewell, Virginia, 4 Cir., 332 F.2d 460.

"The plaintiffs concede, in general, that the elementary school zone boundaries were drawn along natural geographic boundaries and barriers. They contend as unreasonable only the boundary between Arlington and Woodlawn School zones. That boundary, however, runs along a main arterial highway, and the plaintiffs can suggest no other boundary between those zones of geographic significance. Use of that boundary incorporates in the Woodlawn zone certain areas which are closer to Arlington School. However, any transfer to Arlington of any readily divisible portion of that part of the Woodlawn School zone lying closer to Arlington School would result in a transfer to Arlington School of far more pupils than it could receive, leaving Woodlawn School greatly underpopulated.

"These are the two schools which Hopewell acquired by annexation of adjacent territory. Neither is centrally located in the zone it serves, but the main highway along which the School Board has drawn the boundary which separates those two zones is patently the most logical and reasonable. Such an artery is a natural boundary to choose in the absence of any other significant geographic feature. The fact that a portion of Woodlawn zone lies closer to Arlington School than Woodlawn School is not a valid objection to the plan when incorporating a portion of that area into the Arlington School zone would leave Arlington overwhelmed with pupils, for which it could not care, and Woodland greatly underpopulated. Arlington zone's other boundaries are the limits of the City, the Seaboard Airline Railroad and industrial areas, so that there are no feasible compensating adjustments by which portions of the Arlington zone might be shifted to permit it to include a portion of Woodlawn zone.

"Under these circumstances, the District Court was abundantly justified in concluding that the zone boundaries were resonably drawn in accordance with natural geographic features and not on racial lines.

"Assignments to the high schools are made in accordance with a feeder system. We find nothing objectionable in this when the primary school zoning is on a nonracial basis, for the result is, in effect, to create reasonable zones for the high schools. The zones of those primary schools which feed each high school are collectively the zone for the high school. So viewed, the high school zones are as compact and reasonable as the primary school zones which we have considered.

"The plaintiffs suggested below that the high school zones might have been drawn differently, but their suggestion was impractical because it would have overly crowded one school while underpopulating another. The School Board's lines achieved an even distribution of pupils, and there was an evidentiary basis supporting the District Court's approval of them."

ARGUMENT

I

The Geographic Features of the Assignment Plan Were Properly Approved

The foregoing statement of the case makes it abundantly clear that the school zones adopted by the respondent school board are drawn as far as possible along natural geographic boundaries particularly railroads. As the Court of Appeals noted the petitioners "contend as unreasonable only the boundary between Arlington and Woodlawn School Zones." As the Court noted the boundary between those zones is geographically the most significant. THE BOUNDARY RESULTS IN A DIVISION OF THE PUPILS BETWEEN THE ZONES WHICH ALMOST PERFECTLY MATCHES THE SCHOOL CAPACITIES. The boundary suggested by the petitioners would leave "Arlington overwhelmed with pupils, for which it could not care, and Woodlawn greatly underpopulated."

It should also be noted that insofar as the racial composition of the schools is concerned the transfer of residence by any child, white or colored, will result in his transfer to the school serving his new residence regardless of the racial composition of that school. Under those circumstances the plan may be said to meet the true Constitutional test—for it is colorblind.

II

The Faculty Question is Not Before The Court

If the question of faculty desegregation is involved in this case it must have arisen in the original complaint or in the Motion for Further Relief. The petitioners did not appeal from the ruling of the District Court on either of those pleadings and in neither instance did the court treat with the matter of faculty. What is now before the Court is the action of the District Court in approving a plan called for by the District Court in its order on the original complaint. At that time the District Court ordered:

> "The School Board of the City of Hopewell and the Division Superintendent of Schools, however, are granted leave to file with the Court within 90 days a plan to provide for immediate steps to terminate discriminatory practices *in the assignment of pupils to the schools in the City*. If a plan is submitted and approved, the injunction mentioned in paragraph 2 of this order shall be suspended and the admission of Negro students may be in accordance with the plan." (Italics supplied.)

It is clear therefore that the plan called for deals only with "assignment of pupils to schools" and not to faculty practices—as the Court of Appeals noted "There has been no inquiry into that matter in the District Court * * *." The

petitioners have a readily available forum in which to have the matter examined into—it should not and cannot appropriately be opened at this stage.

CONCLUSION

For the reasons stated it is submitted that the petitioners fail to present a case in which certiorari should be granted.

Respectfully submitted,

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